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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AUG 19 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In The Matter of the)
Application of) WT Docket No. 95-11
)
HERBERT L. SCHOENBOHM)
Kingshill, Virgin Islands)
)
For Amateur Station)
and Operator Licenses)

To: The Commission

**WIRELESS TELECOMMUNICATIONS BUREAU'S
OPPOSITION TO PETITION FOR RECONSIDERATION**

1. The Chief, Wireless Telecommunications Bureau (Bureau), by his attorneys, and pursuant to Section 1.106(g) of the Commission's Rules, 47 C.F.R. § 1.106(g), now opposes the "Petition for Reconsideration" filed Herbert L. Schoenbohm (Schoenbohm) on August 5, 1998 (Petition). Schoenbohm seeks reconsideration of the Commission's Decision, FCC 98-139 (released July 8, 1998) denying Schoenbohm's application for review and application to renew his amateur station and operator licenses (Decision). For the reasons that follow, Schoenbohm's Petition should be dismissed or denied.

2. A petition for reconsideration of a denial of an application for review must be based on either changed circumstances or newly discovered facts that could not, with due diligence, have been discovered earlier. See Section 1.106(b)(2) of the Commission's Rules.¹

¹ Section 1.106(b)(2) of the Commission's Rules provides: "Where the Commission has denied an application for review, a petition for reconsideration will be entertained only if one

Schoenbohm makes three arguments in his Petition. First, he argues that the Commission's Decision is inconsistent with Richard Richards, 77 RR 2d 1282 (Rev. Bd. 1995) and Alessandro Broadcasting Co., 99 FCC 2d 1 (Rev. Bd. 1984). Petition, pp. 1-2. Second, he argues that the Commission's *ex parte* rules as applied in this case violate his First Amendment rights. Petition, p. 2. Third, Schoenbohm speculates, based upon an amateur radio conversation, that the proceeding may have been tainted by calls allegedly made to the Administrative Law Judge who presided in this proceeding. Petition, pp. 3-4. None of these arguments meet the standard for reconsideration of a Commission decision contained in Section 1.106(b)(2) of the Commission's Rules. Moreover, none of Schoenbohm's arguments have any merit.

3. Schoenbohm first observes that the Decision "oddly" does not mention Richard Richards, *supra* and Alessandro Broadcasting Co., *supra*. Schoenbohm claims that his felony conviction (for use of a counterfeit access device; 18 U.S.C. § 1029(a)(1)) is less significant than the felony convictions of the applicants in those cases, and that by denying his renewal application, the Commission has treated him unequally. This argument, which Schoenbohm also made earlier in this proceeding, is not based on any changed circumstances or newly discovered facts. The argument therefore does not meet the criteria of Section 1.106(b)(2) of the Commission's Rules and must be rejected. Furthermore, if the merits of Schoenbohm's

or more of the following circumstances is present: (i) The petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or (ii) The petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity."

argument could be reached, it would have to be rejected. Alessandro Broadcasting Co., supra, and Richard Richards, supra, are completely inapposite. Neither case involves an individual convicted of fraudulent activities. The Commission stated in its Policy Statement Concerning Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1197 (1986) (footnote omitted) that "convictions not involving fraudulent conduct are generally not relevant to an applicant's propensity for truthfulness and reliability" Because Schoenbohm's conviction did involve fraudulent activity, his conviction directly reflects on his reputation for truthfulness. Furthermore, in Alessandro, supra, 99 FCC 2d at 11 n.13, the Board concluded that the applicant in question was qualified because the crime occurred in the remote past and because he had been officially rehabilitated by local authorities.² Richard Richards is also readily distinguishable from this case because the licensee in that case did not recommend that Richards be denied federal benefits.

4. Next, Schoenbohm reiterates his claim that the Commission's treatment of the ex parte issue in this proceeding violates his First Amendment right to freedom of speech and to petition the government for redress of grievances. This argument, which Schoenbohm made earlier in the proceeding, is also not based on any changed circumstances or newly discovered facts. It, therefore, does not meet the criteria of Section 1.106(b)(2) and must be rejected. Indeed, the Commission explicitly rejected this argument in Paragraph 23 of the Decision, and Schoenbohm has presented no reason for reconsideration. As the Commission wrote:

² Schoenbohm is incorrect when he states that the applicant in Alessandro was "granted a license" (Petition, p. 1). In fact, another application was granted on Section 307(b) grounds, and the discussion of the other applicant's qualifications was *dicta*.

The ex parte rules do not infringe upon an applicant's right to discuss a proceeding with others. Rather, they protect the integrity of the administrative process by ensuring that the Commission's decisions are fair and impartial and that they are based on a public record free of any taint of improper influence from non-record communications between decision makers and outside persons.

Decision, ¶23. Schoenbohm's attempt to get Congressional pressure asserted in an adjudicatory proceeding plainly violated the Commission's ex parte rules.

5. Finally, Schoenbohm requests that the Commission launch an inquiry to determine whether members of the public made telephone calls to Administrative Law Judge Edward Luton and "to determine and report the content, number and timing of any such calls." Schoenbohm asserts that he has heard "recurrent rumors" that amateurs who are "critical of Schoenbohm" made telephone calls to Judge Luton, who presided in this proceeding, and provides a transcription (designated by Schoenbohm as "Exhibit A") of a tape recording Schoenbohm says he made on January 17, 1998, of a conversation over amateur radio in which there is a reference to "people who wrote or called Judge Luton." Schoenbohm believes that "if telephone calls were made to the Judge, they should be disclosed, so that the Commission and the parties may evaluate whether they tainted the proceedings." Schoenbohm's request for an inquiry must also be rejected because it is not based on any changed circumstances or newly discovered facts. Section 1.106(b)(2) of the Commission's Rules. The facts Schoenbohm claims to have discovered were known on January 17, 1998, but he did not bring them to the Commission's attention until August 5, 1998. Furthermore, if Schoenbohm's request for an inquiry could be considered, it would still have to be rejected because it is based entirely on rumor, hearsay and speculation. Schoenbohm provides no

competent evidence that an attempt was actually made to contact Judge Luton or that any such attempt was successful. Under those circumstances, there is no reason to question whether this proceeding has been "tainted."

6. Schoenbohm's Petition is, therefore, completely lacking in merit. Indeed, the Petition appears to be filed for the primary purpose of extending Schoenbohm's authority to operate his amateur station during the Petition's pendency. Accordingly, the Bureau asks the Commission to expeditiously dismiss or deny Schoenbohm's Petition.

Respectfully Submitted,

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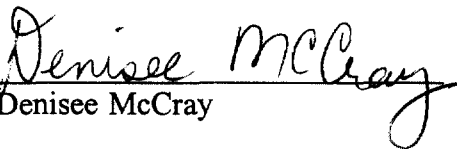
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August 19, 1998

CERTIFICATE OF SERVICE

I, Denisee McCray, a secretary in the Enforcement and Consumer Information Division, Wireless Telecommunications Bureau, certify that I have, on this 19th day of August 1998, sent by first class mail, copies of the foregoing "Wireless Telecommunications Bureau's Opposition to Petition for Reconsideration" to:

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